

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

SIDNEY G.,

Claimant,

vs.

EASTERN LOS ANGELES
REGIONAL CENTER,

Service Agency.

OAH Case No. 2005071047

OAH Case No. 2005110677

DECISION

These matters came on regularly for hearing before David B. Rosenman, Administrative Law Judge of the Office of Administrative Hearings (OAH), on March 15, April 5, and May 9 and 10, 2006, in Alhambra, California.

Claimant Sidney G. was represented by his parents, mother Priscilla R. and father Craig G.¹

Carmen Vasquez, Early Start Manager for the Eastern Los Angeles Regional Center (Service Agency or ELARC), appeared on behalf of the Service Agency.

Evidence was received. The record remained open for the receipt of closing briefs. Claimant's first Closing Brief was received and marked for identification as Exhibit C-28.² The Service Agency's Closing Brief was received and marked for identification as Exhibit SA-21. Claimant's second Closing Brief was received and marked for identification as Exhibit C-29. The record was closed on June 19, 2006, and the matter was submitted.

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¹ Initials are used to maintain confidentiality.

² Both parties numbered their exhibits. Claimant's exhibits are marked with a "C," and the Service Agency's are marked "SA."

ISSUES

At a Prehearing Conference on February 14, 2006, the parties discussed the issues and determined the issues are as follows (The Prehearing Conference Order is Exhibit C-1):

1. How should the parties complete the current Individual Program Plan (IPP) process?
2. Should ELARC accommodate Claimant's mother's dyslexia by allowing her to tape record meetings and classes and by sending correspondence concerning Claimant's case to his father's residence?
3. Should Claimant's family be reimbursed for expenses incurred since October 2004 for respite, a 1:1 aide, an after school program, and recreational activities?
4. What is the appropriate location for Claimant to receive services provided through ELARC?
5. Should ELARC be ordered to provide Claimant's family with written notice of all decisions/actions affecting services provided to Claimant?
6. Should ELARC be required to honor orders issued in cases that were decided when Claimant was a Frank D. Lanterman Regional Center consumer?

FINDINGS OF FACT

1. Claimant is a six-year-old boy (date of birth, November 8, 1999), who has been diagnosed with Down's syndrome and unspecified mental retardation. He began receiving Early Start services before age three, and was previously a consumer of the Frank D. Lanterman Regional Center (FDLRC). Claimant has delays in cognitive abilities and in adaptive functioning. Claimant is enrolled in a special day class in Pasadena, and receives speech therapy supplied by the school district. Requests are pending with the school district for occupational therapy and adaptive physical education.

2. This hearing is the result of some issues that arose from the move of Claimant and his mother from the area served by the FDLRC to the area served by the ELARC. Claimant's father continues to live in the area served by the FDLRC. As a result of the transfer of responsibility for coordinating services for Claimant, disputes arose that resulted in Claimant filing two requests for a fair hearing, one dated July 23, 2005, and the second dated November 17, 2005. As part of the process of postponing earlier hearing dates, Claimant waived the statutory time limits for the hearings to occur and the decision to be rendered found in Welfare and Institutions Code section 4712.³

³ All statutory references are to the Welfare and Institutions Code.

3. At the hearing, the Service Agency agreed to the following resolutions of some of the issues for hearing.

Regarding Issue no. 2, the Service Agency agreed that Claimant's mother could tape record meetings and classes, and that correspondence concerning Claimant would be sent to both Claimant's mother and Claimant's father.⁴

Regarding Issue no. 4, the Service Agency agreed that it does not object to the locations where services are being delivered to Claimant.

Regarding Issue no. 5, the Service Agency agreed that it would provide written notice, to Claimant's mother and father, of all decisions affecting services provided to Claimant.

4. These agreements resolve the entirety of Issue no. 2 and resolve most, but not all, questions relating to Issues nos. 4 and 5. For example, regarding Issue no. 4, the agreement does not address future services. There is no issue for resolution in this hearing concerning specific services to be provided, and we cannot speculate on what services may be required in the future. Therefore, no blanket decision can be made at this time on the location of such services. When it is determined in the future that specific services are needed and should be provided, the location of such services for Claimant should be the subject of specific discussion and agreement between the Service Agency and Claimant's parents.

5. Regarding Issue no. 5, while the agreement includes notification of decisions by the Service Agency about services for Claimant, it does not address other actions by the Service Agency related to services for Claimant. Under Welfare and Institutions Code section 4710, the Service Agency is required by law to notify a consumer in writing of any decision, without mutual consent, to reduce, terminate, or change services. The parties did not cite to any law requiring the Service Agency to send written notice of any other actions taken concerning a consumer's services. However, the Service Agency maintains records, including interdisciplinary notes and other types of documentation, of the various actions taken concerning a consumer's services. Under sections 4725 to 4731, consumers can have access to these records upon making an oral or written request. Therefore, Claimant may obtain documentation of all actions taken with respect to services for Claimant by following the procedures in these sections.

6. Two prior Decisions concerning the services to be provided for Claimant by the FDLRC are summarized below. There was no evidence of any other prior Decisions concerning Claimant.

a. OAH case no. L2003060417, Decision dated August 15, 2003, by Administrative Law Judge (ALJ) Samuel D. Reyes, is summarized as follows: Claimant's mother has been diagnosed with dyslexia, a learning disorder, and as a result, it is difficult

⁴ Claimant's mother and Claimant's father live apart.

for her to quickly comprehend verbal and written information. Claimant's mother requested to tape record IPP meetings and the FDLRC denied her request, raising concerns of privacy. ALJ Reyes determined that Claimant's mother should be entitled to seek the consent of all participants in the IPP meeting to tape record the meeting and that such requests "shall not be unreasonably denied." If consent was not given, other accommodations were permitted, such as additional time and assistance for Claimant's mother to comprehend material and participate in the IPP process. (Exhibit C-18a.)

b. OAH case no. L2003080554, Decision dated February 9, 2004, by ALJ Timothy S. Thomas, is summarized as follows: Claimant was using some sign language to communicate, and his parents wanted training to learn more. The school district denied their request, stating a preference for development of spoken language. ALJ Thomas determined that the FDLRC should fund the cost of sign language training for Claimant and his parents. (Exhibit C-18d.)

7. Resolution of Issue no. 6 requires a determination of whether the ELARC must honor these two decisions. In the first Decision (OAH case no. L2003060417), ALJ Reyes ordered that Claimant's mother could request to tape record meetings with regional center personnel. As the Service Agency agrees that Claimant's mother can record meetings and classes (see Finding 3), and as this agreement is broader than ALJ Reyes' order, there is no need to determine whether ELARC must comply with the earlier order.

8. In the second Decision (OAH case no. L2003080554), ALJ Thomas determined that the FDLRC should fund the cost of sign language training for Claimant and his parents. In her testimony, Claimant's mother confirmed that these classes were funded and were taken by Claimant and his mother and father. However, Claimant's mother contends that additional sign language classes would be beneficial.

The FDLRC complied with ALJ Thomas' order. Therefore, there is no basis to order the ELARC to comply with it. The present request for additional sign language classes should be submitted by Claimant to the Service Agency for its determination of whether there is a present need for this service.

9. Resolution of Issue no. 3, reimbursement for certain expenses incurred since October 2004, requires an understanding of the facts relating to Claimant's move and the transfer of his services from the FDLRC to the ELARC. This issue is limited to expenses for respite, a 1:1 aide, an after school program, and recreational activities.

10. On August 19, 2004, Claimant's mother faxed a letter reminding the FDLRC that Claimant's file should be transferred to the ELARC (Exhibit C-17c). The documentation of the transfer (found in Exhibit SA-1) indicates that the transfer was to be effective on September 15, 2004, and that Claimant was receiving the following services: an afterschool program, swimming, a 1:1 aide for the after school program, and respite.

11. Without finding facts on each and every step of the process, the evidence established that the ELARC did not properly effectuate the transfer of all services in a timely manner. The evidence also established that Claimant's parents made changes to some of the services they wanted for Claimant, such that the transfer was not as smooth as it could have been.

12. The parties are at an impasse over the issue of respite because Claimant's parents wanted to pursue becoming vendored to provide that service themselves, however Claimant's mother believed that she could not understand and complete the training classes without the ability to tape record them. As a result of the agreement of the parties (see Finding 3), Claimant's parents should be able to tape record the classes and, thereby, pursue this option.

13. With respect to the costs of respite care for Claimant's family from October 2004 to present, it was established by the evidence that the Service Agency did not take sufficient action to advise Claimant's parents of the various options for respite care that were available and to provide respite care that was available and acceptable. Claimant's parents are entitled to be reimbursed for their costs of respite care for Claimant's family.

14. Claimant's parents established that their costs of respite care since October 2004 has been \$400 per month (40 hours per month @ \$10) for the months of October 2004 through February 2005, for a total of \$2000.

15. Claimant's parents wanted Claimant to attend an after school program provided by a Smile A While, a vendor that had been approved by the Service Agency to provide a summer camp program. The vendor did not desire to pursue the process to become vendored as an after school program. Of interest, the Service Agency paid for portions of Claimant's attendance at Smile A While during periods when his school was not in session. Some of the other vendored programs suggested by the Service Agency were not appropriate in meeting Claimant's needs. Claimant's parents therefore have the options of: locating another after school program that has been vendored by the Service Agency, finding a program that is willing to become vendored so that the Service Agency can pay for it, or paying themselves for a non-vendored program.

16. With respect to the costs of Claimant's attendance at a non-vendored after school program from October 2004 to present, it was established by the evidence that the Service Agency did not take sufficient action to advise Claimant's parents of the various options for care that were available and to provide a program that was available and acceptable. Claimant's parents are entitled to be reimbursed for their costs of sending Claimant to an after school program.

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17. With respect to the costs of a 1:1 aide for the after school program for Claimant from October 2004 to present, it was established by the evidence that the Service Agency did not take sufficient action to advise Claimant's parents of the various options for a 1:1 aide for the after school program that were available and to provide a 1:1 aide for the after school program who was available and acceptable. Claimant's parents are entitled to be reimbursed for their costs of a 1:1 aide for the after school program for Claimant. As noted above, for some of the time periods from October 2004 to the present, the Service Agency has provided an after school program and/or a 1:1 aide for the after school program for Claimant. As Claimant's parents did not pay for these time periods, no reimbursement is ordered for them.

18. The evidence of the costs to Claimant's parents for an after school program and a 1:1 aide for the after school program is found in copies of some bills and receipts (Exhibits C-23a through C-23g) and in a compilation prepared for the hearing (Exhibit C-27). In several instances, Claimant's parents paid for an after school program and a 1:1 aide for the after school program in a combined bill; that is, the bills from the Smile A While program generally include a weekly program charge of \$120 and a separate weekly charge for a 1:1 aide of \$150. Charges by Smile A While are as follows: January 2005, \$1,100; February 2005, \$1,375; March 2005, \$1,100; April 2005, \$825; May, June and July 2005, \$1,100 each, for a subtotal of \$7,400.

Claimant's parents also paid for the Kids Club after school program, for October, November and December 2004, \$490 per month, for a subtotal of \$1,470.

Claimant's parents also paid for an individual named Trinidad Gomez to assist in Claimant's care (\$1,000 per month for the months of June, October, November and December 2005). The evidence established that Mr. Gomez assisted Claimant during various time periods, sometimes with the expectation that he would be hired as an employee of an approved vendor, which ultimately did not occur. However, the evidence established that his services during the time period of the payments set forth above were more in the nature of childcare than as a 1:1 aide during an after school program. (See, for example, Exhibit C-23g, which includes receipts for childcare expense, as well as the testimony of Claimant's mother.) As childcare expense is not included in the issue statement concerning reimbursement, it will not be ordered herein.

Claimant's parents established that their reimbursable costs for an after school program and a 1:1 aide for the after school program are \$9,170.

19. With respect to the costs of Claimant's swimming lessons from October 2004 to present, there was no evidence that Claimant's parents paid any out-of-pocket costs. Therefore, no reimbursement will be ordered.

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20. The process of completing Claimant's IPP process has been slowed, in part, by the problems in arranging a proper transition of services from the FDLRC to the ELARC, by the delay before the Service Agency agreed to allow Claimant's mother to tape record IPP meetings and classes, and by some changes that Claimant's parents wanted in the services Claimant was receiving from FDLRC. In total, the evidence established that some of the parents' concerns were well taken and that others should be avoided by better processes of communication, follow up and decision making. At other times, however, the Service Agency followed the appropriate process of review and analysis before reaching timely decisions and taking timely actions on service requests or other issues.

21. The Service Agency's practice of having the service coordinator and others meet with the parents to develop an IPP, which is then reviewed by a supervisor, is not inherently inappropriate, and it is not necessary for the Service Agency to have someone available at the IPP to immediately issue decisions, especially when further information, assessments or review is needed before an intelligent decision can be made. The evidence also established that Claimant's parents have not clearly understood the process whereby they have been asked to sign an IPP, and whether they can indicate their presence at an IPP meeting without indicating agreement with all, some or none of the substantive IPP. Claimant's parents should be allowed to add to the IPP developed in the future, a written document indicating to what extent, if any, they agree with the information and services contained in the IPP document. If there is a disagreement concerning services, the Service Agency must comply with the requirements of section 4646, subdivision (f), to schedule a subsequent meeting within 15 days, and any other meetings agreed to by the Service Agency and Claimant's parents. However, Claimant's parents must also be aware that the process of developing an IPP for Claimant requires cooperation, and that the team developing the IPP is not required to accede to the wishes of a consumer's family if such is determined to not be in the best interests of the consumer.

22. There is no legal provision that permits a past IPP to be removed from a Claimant's records. However, the concerns of Claimant's parents about possibly incorrect information being included in past IPP documents can be adequately addressed by allowing Claimant's parents to submit, in writing, a document indicating the information in prior IPP documents that they believe is in error, and to have this document attached to a future IPP document.

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APPLICABLE LAW, LEGAL CONCLUSIONS AND DISCUSSION

The Lanterman Developmental Disabilities Services Act

23. The California Legislature enacted the Lanterman Developmental Disabilities Services Act (the Lanterman Act)⁵ to provide facilities and services to meet the needs of those with developmental disabilities, regardless of age or degree of handicap. The purpose of this comprehensive statutory scheme is twofold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community; and to enable developmentally disabled persons to approximate the pattern of everyday living of nondisabled persons the same age so as to live more independent and productive lives in the community.

The statutory scheme requires state agencies, such as the Department of Developmental Services (DDS), and private entities, such as regional centers (one of which is the ELARC) to implement the Lanterman Act. The DDS has jurisdiction over the implementation of laws related to the care, custody, and treatment of developmentally disabled persons. Regional centers, which are private nonprofit community agencies under contract with the DDS, are charged with providing developmentally disabled persons with access to the facilities and services best suited to them throughout their lifetimes.⁶

The IPP Concept

24. The IPP is described and referred to in numerous sections of the Act, and the parties referred to several of those sections during the hearing. Set out below are some of the sections that describe the purpose of the IPP and the process of preparing and modifying the IPP.

25. Section 4512, subdivision (b), provides, in part:

“‘Services and supports for persons with developmental disabilities’ means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. . . .”

⁵ The Lanterman Act is found at Welfare and Institutions Code section 4400 *et seq.*

⁶ See, *Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119.

26. Section 4646 provides, in part:

“(a) It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

“(b) The individual program plan is developed through a process of individualized needs determination. The individual with developmental disabilities and, where appropriate, his or her parents, legal guardian or conservator, or authorized representative, shall have the opportunity to actively participate in the development of the plan.

[¶] . . . [¶]

“(d) Individual program plans shall be prepared jointly by the planning team. Decisions concerning the consumer's goals, objectives, and services and supports that will be included in the consumer's individual program plan and purchased by the regional center or obtained from generic agencies shall be made by agreement between the regional center representative and the consumer or, where appropriate, the parents, legal guardian, conservator, or authorized representative at the program plan meeting.”

27. Section 4646.5 provides, in part:

“(a) The planning process for the individual program plan described in Section 4646 shall include all of the following:

“(1) Gathering information and conducting assessments to determine the life goals, capabilities and strengths, preferences, barriers, and concerns or problems of the person with developmental disabilities. For children with developmental disabilities, this process should include a review of the strengths, preferences, and needs of the child and the family unit as a whole. Assessments shall be conducted by qualified individuals and performed in natural environments whenever possible. Information shall be taken from the consumer, his or her parents and other family members, his or her friends, advocates, providers of services and supports, and other agencies. The assessment process shall reflect awareness of, and sensitivity to, the lifestyle and cultural background of the consumer and the family.

“(2) A statement of goals, based on the needs, preferences, and life choices of the individual with developmental disabilities, and a statement of specific, time-limited objectives for implementing the person's goals and addressing his or her needs. These objectives shall be stated in terms that allow measurement of progress or monitoring of service delivery. These goals and objectives should maximize opportunities for the

consumer to develop relationships, be part of community life in the areas of community participation, housing, work, school, and leisure, increase control over his or her life, acquire increasingly positive roles in community life, and develop competencies to help accomplish these goals.

[¶] . . . [¶]

“(4) A schedule of the type and amount of services and supports to be purchased by the regional center or obtained from generic agencies or other resources in order to achieve the individual program plan goals and objectives, and identification of the provider or providers of service responsible for attaining each objective, including, but not limited to, vendors, contracted providers, generic service agencies, and natural supports. The plan shall specify the approximate scheduled start date for services and supports and shall contain timelines for actions necessary to begin services and supports, including generic services.

[¶] . . . [¶]

“(b) For all active cases, individual program plans shall be reviewed and modified by the planning team, through the process described in Section 4646, as necessary, in response to the person's achievement or changing needs, and no less often than once every three years. If the consumer or, where appropriate, the consumer's parents, legal guardian, or conservator requests an individual program plan review, the individual program shall be reviewed within 30 days after the request is submitted.”

28. Section 4647, subdivision (a), provides:

“(a) Pursuant to Section 4640.7, service coordination shall include those activities necessary to implement an individual program plan, including, but not limited to, participation in the individual program plan process; assurance that the planning team considers all appropriate options for meeting each individual program plan objective; securing, through purchasing or by obtaining from generic agencies or other resources, services and supports specified in the person's individual program plan; coordination of service and support programs; collection and dissemination of information; and monitoring implementation of the plan to ascertain that objectives have been fulfilled and to assist in revising the plan as necessary.”

29. Section 4648, subdivision (a)(1), provides:

“In order to achieve the stated objectives of a consumer's individual program plan, the regional center shall conduct activities including, but not limited to, all of the following:

“(a) Securing needed services and supports.

“(1) It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices. The regional center shall secure services and supports that meet the needs of the consumer, as determined in the consumer's individual program plan, and

within the context of the individual program plan, the planning team shall give highest preference to those services and supports which would allow minors with developmental disabilities to live with their families, adult persons with developmental disabilities to live as independently as possible in the community, and that allow all consumers to interact with persons without disabilities in positive, meaningful ways.”

30. The process created by these sections and others can be summarized and explained in less technical terms. The Code sections set forth criteria that relate to the development and modification of an IPP for a person with a developmental disability, referred to as a consumer.

An IPP is developed through a collaborative effort involving the appropriate regional center and the consumer and/or the consumer’s representative(s), and others, collectively referred to as the interdisciplinary team (or ID Team). It was the intent of the Legislature that persons with diverse skills and expertise were to serve on the ID Team. They were intended to confer, deliberate, and decide what should be included in the consumer’s IPP. The ID Team may not abdicate its role nor may it ignore its duty owed not only to the consumer but also to the IPP process.

The IPP is prepared for the consumer by identifying necessary services and supports. The service agency must allow the consumer and his parents to participate in developing the IPP. The plan must be based on information and assessments relating to the consumer’s life goals, his capabilities and strengths, his preferences, any barriers to meeting his goals, his concerns, and other relevant data.

Assessments must be conducted by qualified individuals and performed in natural environments whenever possible. Information must be obtained from the consumer, the consumer’s parents and other family members, friends, advocates, any providers of services and supports, and any other interested agencies. The assessment process must reflect an awareness of, and sensitivity to, the lifestyle and cultural background of the consumer and the family. Claimant and his parents have the reciprocal obligation to assist the Service Agency in meeting its mandate. No consumer should benefit by withholding information or by refusing to cooperate with the regional center, even if such conduct is well intentioned.

An IPP must include a statement of the consumer’s goals, based on the consumer’s needs, preferences, and life choices. An IPP must contain specific, time-limited objectives to implement identified goals. Objectives must be constructed to allow measurement of progress and monitoring of service delivery. Identified goals and objectives should maximize a consumer’s opportunity to develop relationships and participate in community life, in housing, work, school, and leisure activities. Identified goals and objectives should increase the consumer’s control over his life, should assist the consumer in acquiring increasingly positive roles in community life, and should be directed toward developing competency to help accomplish these goals. Proper goals and objectives allow for efficient evaluation of the effectiveness of the plan and the progress made by a consumer.

The regional center is required to prepare a plan identifying the services and supports a consumer needs to meet the goals and objectives identified by the ID Team, and determine whether those services and supports are to be purchased by the regional center, obtained from generic agencies, or provided from other sources. Claimant and his parents have the right to provide the Service Agency with input into the selection of the providers of those services and supports.

An IPP must be signed before it can be implemented. If a consumer and/or his representatives do not agree with all of the components contained in an IPP, the area(s) of disagreement may be noted; but, a disagreement with specific IPP components does not prevent implementation of those services and supports to which there is no disagreement. The regional center must send written notice advising the consumer and/or his representatives of the right to a fair hearing as to the areas of disagreement.

These statutes require that the services provided must be effective in meeting IPP goals, that the IPP should reflect the preferences and choices of the consumer, and that the IPP should be cost-effective in its use of public resources.

The Transfer of a Consumer From One Regional Center to Another

31. Section 4643.5 covers the transfer of a consumer's services and continuing eligibility. Pursuant to subdivision (a): "If a consumer is or has been determined to be eligible for services by a regional center, he or she shall also be considered eligible by any other regional center if he or she has moved to another location within the state."

Pursuant to subdivision (c): "Whenever a consumer transfers from one regional center catchment area to another, the level and types of services and supports specified in the consumer's individual program plan shall be authorized and secured, if available, pending the development of a new individual program plan for the consumer. If these services and supports do not exist, the regional center shall convene a meeting to develop a new individual program plan within 30 days. Prior to approval of the new individual program plan, the regional center shall provide alternative services and supports that best meet the individual program plan objectives in the least restrictive setting. The department shall develop guidelines that describe the responsibilities of regional centers in ensuring a smooth transition of services and supports from one regional center to another, including, but not limited to, pretransferring planning and a dispute resolution process to resolve disagreements between regional centers regarding their responsibilities related to the transfer of case management services."

The Necessity for Cooperation Among the Participants in the IPP Process

32. Section 4646 specifically provides that IPP's "shall be prepared jointly by the planning team." That section further provides that "decisions concerning the consumer's goals, objectives, and services and supports that will be included in the consumer's IPP and

purchased by the regional center . . . shall be made by agreement between the regional center representative and the consumer” or his representatives. It is not the intention of the Legislature to have IPP programming and implementation of that programming decided unilaterally, either by a consumer or his representatives or by the regional center. The fact that Claimant’s parents have chosen a particular program or service or provider, is an insufficient basis upon which to compel the Service Agency to fund that choice. It was not the intent of the Act to extend to a consumer or his parents the sole discretion or an unlimited unilateral authority over programming choices. Rather it is the intent to assure that consumer and family choices and preferences are taken into consideration and made a part of the consumer’s IPP if all other requisites are met.

33. It must be understood both by the parents and the Service Agency that a balance of reasonableness and cooperation must be maintained when seeking to identify and implement the service needs of Claimant. The Lanterman Act requires that all purchases of services be secured for, and calculated to meet the needs of, the consumer. Consumer preferences can not relieve the regional center from its obligation under the Lanterman Act to administer the Act and expend public funds in a program-effective and cost-effective manner. Administering the Act as intended by the Legislature includes properly assessing, identifying and providing for specifically identifiable services, in a manner which allows measurement of the effectiveness of those services against agreed-upon goals and objectives. Because it is so important that all services provided are appropriately calculated to meet a consumer’s needs as planned, it is imperative that there exists the highest degree of cooperation from all ID Team participants.

34. Claimant and his parents have the right to provide the Service Agency with input into the Service Agency’s selection of the providers of services, consistent with section 4648, subdivision (a)(6). Claimant and his parents do not have the right to dictate what decisions the Service Agency must make. If Claimant or his parents believe the Service Agency has made a bad decision, they have the right to appeal.

Under all of the circumstances herein, it is appropriate to order that the parties convene a new IPP meeting, particularly because of the issues and problems that have hindered the full and informed participation of Claimant’s parents. The legislation anticipates a collaborative effort. Although a consumer and the family are empowered with important rights, there are also responsibilities that the family must shoulder.

The regional centers can not discharge their duties if they do not have the right to obtain information, the power to obtain that information, and the opportunity to use that information in the IPP process. At the same time, a person who seeks benefits from a regional center must bear the burden of providing information, submitting to reasonable exams and assessments, and cooperating in the planning process. (See Civil Code section 3521: “He who takes the benefit must bear the burden.”) Of course, parents can refuse to do anything that they feel works to the detriment of their children. If services cannot be effectively delivered, monitored, and measured against goals and objectives, the regional center may be under no obligation to serve that consumer.

35. The ID Team must be allowed to participate in all decisions relating to providing services. It follows that Claimant's family must facilitate the Service Agency's attempt to develop appropriate goals and objectives for Claimant's services, and that the Service Agency must responsibly pursue the goal of providing services that have been determined to be required for Claimant.

36. The present situation must be remedied for the benefit of Claimant. The Claimant and the Service Agency must convene an IPP meeting within 30 days. Claimant's parents must provide to the Service Agency any information it needs in order to assess Claimant's condition, and they must participate in any assessment process and the collaborative planning process. The unique aspects of the IPP process, and its dependence on family participation in the determination of goals and objectives for Claimant's ongoing services, cannot be stressed enough.

If the parties can not agree on the individual program plan, subsequent meetings can be scheduled to resolve the differences and, if necessary, a fair hearing can be held to resolve those differences. At that time, the issues of Claimant's present needs and the cost-effective ways of meeting those needs can be properly placed in front of an administrative law judge.

37. A fair hearing should always be viewed as a last resort. The fair hearing process is time-consuming and labor-intensive and uses precious public resources that, in a perfect world, would be directed elsewhere. Not only must the Department of Developmental Services use its funds to conduct the hearing, the consumer, his or her family, regional center staff, consultants and experts for both sides, and others must spend time and energy preparing for and participating in the hearing. The time and efforts of consumers, parents, regional center staff and others would be better spent in coordinating services for consumers. While the parties to consumer-regional center relationships will often have conflict, and will often have good-faith, colorable claims that must be resolved by a hearing, that process must remain the last resort.

ORDER

1. Within 30 days, the Service Agency and Claimant's parents shall arrange for an IPP meeting.

2. Claimant's mother may tape record meetings and classes provided by the Service Agency.

3. The Service Agency shall send correspondence concerning Claimant to both Claimant's mother and Claimant's father.

4. The Service Agency shall continue to provide services to Claimant at the locations where services are presently being delivered to Claimant, subject to agreement with Claimant's parents for any change in the location where services shall be provided.

5. The Service Agency shall provide written notice, to Claimant's mother and father, of all decisions affecting services provided to Claimant.

6. The Service Agency shall reimburse Claimant's parents the amount of \$11,170 for costs of respite, an after school program and a 1:1 aide for the after school program.

7. The Service Agency is not required to honor orders issued in two prior Decisions.

Dated: July 6, 2006.

DAVID B. ROSENMAN
Administrative Law Judge
Office of Administrative Hearings

NOTE: This is a final administrative decision pursuant to Welfare & Institutions Code section 4712.5, subdivision (a). Both parties are bound hereby. Either party may appeal this decision to a court of competent jurisdiction within 90 days.